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Cover Page Footnote

Professor of Clinical Law, University of California, Hastings College of the Law, Civil Justice Clinic. I thank Russ Pearce, Jessi Tamayo, and the Louis Stein Center for Law & Ethics for inviting me to participate in this Symposium on the Lawyer's Role in a Contemporary Democracy. I thank Mark Aaronson, Miye Goishi, and Holly Miller for their comments on drafts of this essay.

THE CHALLENGE OF DEMOCRATIC LAWYERING

Ascanio Piomelli*

INTRODUCTION

Do democratic values potentially inform the work of lawyers? Do democratic ideals have implications for how lawyers structure relationships with clients? Can lawyers contribute to strengthening democracy in the United States? Can they increase the participation of the “disenfranchised” in our democracy? For a growing number of lawyers and theorists committed to pursuing progressive social change, the answer to each of these questions posed by this Symposium is an emphatic “yes.”

These lawyers and theorists comprise a broad movement that stresses the importance of lawyers’ working collaboratively *with* (not simply *on behalf of*) low-income and working-class people, people of color, and their groups and communities to *collectively* push for social change.¹ Lawyers in this

* Professor of Clinical Law, University of California, Hastings College of the Law, Civil Justice Clinic. I thank Russ Pearce, Jessi Tamayo, and the Louis Stein Center for Law & Ethics for inviting me to participate in this Symposium on the Lawyer’s Role in a Contemporary Democracy. I thank Mark Aaronson, Miye Goishi, and Holly Miller for their comments on drafts of this essay.

1. The literature describing this movement is extensive. Its founder and preeminent theorist is Jerry López, author of the defining work in the field. See GERALD P. LÓPEZ, *REBELLIOUS LAWYERING: ONE CHICANO’S VISION OF PROGRESSIVE LAW PRACTICE* (1992) [hereinafter LÓPEZ, *REBELLIOUS LAWYERING*]; see also Gerald P. López, *An Aversion to Clients: Loving Humanity and Hating Human Beings*, 31 HARV. C.R.-C.L. L. REV. 315 (1996); Gerald P. López, *A Declaration of War by Other Means*, 98 HARV. L. REV. 1667 (1985) (reviewing RICHARD E. MORGAN, *DISABLING AMERICA: THE “RIGHTS INDUSTRY” IN OUR TIME* (1984)); Gerald P. López, *Economic Development in the “Murder Capital of the Nation,”* 60 TENN. L. REV. 685 (1993) [hereinafter López, *Economic Development*]; Gerald P. López, *Keynote Address: Living and Lawyering Rebelliously*, 73 FORDHAM L. REV. 2041 (2005); Gerald P. López, *Reconceiving Civil Rights Practice: Seven Weeks in the Life of a Re[b]ellious Collaboration*, 77 GEO. L.J. 1603 (1989) [hereinafter López, *Reconceiving Civil Rights Practice*]; Gerald P. López, *Shaping Community Problem Solving Around Community Knowledge*, 79 N.Y.U. L. REV. 59 (2004).

Another influential early proponent was Lucie White. See Lucie E. White, *Collaborative Lawyering in the Field? On Mapping Paths from Rhetoric to Practice*, 1 CLINICAL L. REV. 157 (1994) [hereinafter White, *Collaborative Lawyering*]; Lucie White, “Democracy” in *Development Practice: Essays on a Fugitive Theme*, 64 TENN. L. REV. 1073 (1997); Lucie E. White, *Facing South: Lawyering for Poor Communities in the Twenty-First Century*, 25 FORDHAM URB. L.J. 813, 822–29 (1998); Lucie E. White, *Goldberg v. Kelly on the Paradox of Lawyering for the Poor*, 56 BROOK. L. REV. 861 (1990); Lucie E. White, *Mobilization on the Margins of the Lawsuit: Making Space for*

Clients to Speak, 16 N.Y.U. REV. L. & SOC. CHANGE 535 (1988) [hereinafter White, *Mobilization on the Margins*]; Panel III: *Creating Models for Progressive Lawyering in the 21st Century*, 9 J.L. & POL'Y 297, 303–20 (2001) [hereinafter *Progressive Lawyering in the 21st Century*] (comments of Lucie White); Lucie White, *Paradox, Piece-Work, and Patience*, 43 HASTINGS L.J. 853 (1992); Lucie E. White, *The Power Beyond Borders*, 70 MISS. L.J. 865, 874–76 (2001); Lucie White, *Representing "The Real Deal,"* 45 U. MIAMI L. REV. 271 (1990–91); Lucie E. White, *Seeking "... The Faces of Otherness ...": A Response to Professors Sarat, Felstiner, and Cahn*, 77 CORNELL L. REV. 1499 (1992); Lucie E. White, *Subordination, Rhetorical Survival Skills, and Sunday Shoes: Notes on the Hearing of Mrs. G.*, 38 BUFF. L. REV. 1 (1990); Lucie E. White, *To Learn and Teach: Lessons from Driefontein on Lawyering and Power*, 1988 WIS. L. REV. 699 [hereinafter White, *To Learn and Teach*].

Other important voices describing approaches to social-change lawyering that I place within this movement include: LUKE W. COLE & SHEILA R. FOSTER, *FROM THE GROUND UP: ENVIRONMENTAL RACISM AND THE RISE OF THE ENVIRONMENTAL JUSTICE MOVEMENT* (2001); JENNIFER GORDON, *SUBURBAN SWEATSHOPS: THE FIGHT FOR IMMIGRANT RIGHTS* (2005) [hereinafter GORDON, *SUBURBAN SWEATSHOPS*]; Muneer I. Ahmad, *Interpreting Communities: Lawyering Across Language Difference*, 54 UCLA L. REV. 999 (2007); Sameer M. Ashar, *Law Clinics and Collective Mobilization*, 14 CLINICAL L. REV. 355 (2008) [hereinafter Ashar, *Collective Mobilization*]; Sameer M. Ashar, *Public Interest Lawyers and Resistance Movements*, 95 CAL. L. REV. 1879 (2007) [hereinafter Ashar, *Resistance Movements*]; Susan D. Bennett, *Little Engines that Could: Community Clients, Their Lawyers, and Training in the Arts of Democracy*, 2002 WIS. L. REV. 469; Luke W. Cole, *Empowerment as the Key to Environmental Protection: The Need for Environmental Poverty Law*, 19 ECOLOGY L.Q. 619 (1992); Luke W. Cole, *Macho Law Brains, Public Citizens, and Grassroots Activists: Three Models of Environmental Advocacy*, 14 VA. ENVTL. L.J. 687 (1995) [hereinafter Cole, *Models of Environmental Advocacy*]; Sheila Foster, *Justice from the Ground Up: Distributive Inequities, Grassroots Resistance, and the Transformative Politics of the Environmental Justice Movement*, 86 CAL. L. REV. 775 (1998); Sheila R. Foster & Brian Glick, *Integrative Lawyering: Navigating the Political Economy of Urban Redevelopment*, 95 CAL. L. REV. 1999 (2007); Jennifer Gordon, *The Lawyer Is Not the Protagonist: Community Campaigns, Law, and Social Change*, 95 CAL. L. REV. 2133 (2007) [hereinafter Gordon, *Not the Protagonist*]; Jennifer Gordon, *We Make the Road by Walking: Immigrant Workers, the Workplace Project, and the Struggle for Social Change*, 30 HARV. C.R.-C.L. L. REV. 407 (1995) [hereinafter Gordon, *We Make the Road*]; Angela Harris, Margaretta Lin & Jeff Selbin, *From "The Art of War" to "Being Peace": Mindfulness and Community Lawyering in a Neoliberal Age*, 95 CAL. L. REV. 2073 (2007); Bill Ong Hing, *Coolies, James Yen, and Rebellious Advocacy*, 14 ASIAN AM. L.J. 1 (2007); Shin Imai, *A Counter-Pedagogy for Social Justice: Core Skills for Community-Based Lawyering*, 9 CLINICAL L. REV. 195 (2002); Shauna I. Marshall, *Mission Impossible?: Ethical Community Lawyering*, 7 CLINICAL L. REV. 147 (2000); *Progressive Lawyering in the 21st Century*, *supra*, at 320–27 (comments of Luke Cole); Ascanio Piomelli, *Appreciating Collaborative Lawyering*, 6 CLINICAL L. REV. 427 (2000); Ascanio Piomelli, *The Democratic Roots of Collaborative Lawyering*, 12 CLINICAL L. REV. 541 (2006) [hereinafter Piomelli, *Democratic Roots*]; Ascanio Piomelli, *Foucault's Approach to Power: Its Allure and Limits for Collaborative Lawyering*, 2004 UTAH L. REV. 395 [hereinafter Piomelli, *Foucault's Allure and Limits*]; William P. Quigley, *Reflections of Community Organizers: Lawyering for Empowerment of Community Organizations*, 21 OHIO N.U. L. REV. 455 (1995); Dean Hill Rivkin, *Lawyering, Power, and Reform: The Legal Campaign to Abolish the Broad Form Mineral Deed*, 66 TENN. L. REV. 467 (1999); Laura L. Rovner, *Disability, Equality, and Identity*, 55 ALA. L. REV. 1043 (2004); Julie A. Su, *Making the Invisible Visible: The Garment Industry's Dirty Laundry*, 1 J. GENDER RACE & JUST. 405 (1998); Christine Zuni Cruz, *[On the] Road Back in: Community Lawyering in Indigenous Communities*, 5 CLINICAL L. REV. 557 (1999).

In linking these authors and works, I am emphasizing connections and bonds that some of the theorists whom I include in this movement seem not always to recognize or to

emerging tradition emphasize working in concert with these clients, groups, communities, and their allies. These lawyers do not see themselves as saviors, protectors, or instructors of befuddled victims, nor as preeminent engines or engineers of social change. Instead, they treat individual and group clients as fellow *citizens*,² able to speak out and to act collectively on their own behalf. These lawyers consider clients not just sources of information on the problems they face, but active partners in working collectively to solve those problems. These lawyers work alongside individual clients, organized and informal groups, and any allies they can enlist, in joint, multidimensional efforts to advocate for justice. Their aim is not primarily legal reform, but rather the transformation of living conditions for those whom our political economy and society routinely deny dignity and equal justice. These lawyers do not categorically reject law or litigation.³ But they are deeply skeptical of *isolated* litigation

embrace. In so doing, I do not deny that there are also significant differences in emphasis, ideology, and practice among these authors and practitioners.

Anthony Alfieri has also associated his work with this approach to lawyering. See Anthony V. Alfieri, *The Antinomies of Poverty Law and a Theory of Dialogic Empowerment*, 16 N.Y.U. REV. L. & SOC. CHANGE 659 (1987–88); Anthony V. Alfieri, *Disabled Clients, Disabling Lawyers*, 43 HASTINGS L.J. 769 (1992); Anthony V. Alfieri, *Faith in Community: Representing "Colored Town,"* 95 CAL. L. REV. 1829 (2007); Anthony V. Alfieri, *Practicing Community*, 107 HARV. L. REV. 1747 (1994) (reviewing LÓPEZ, *REBELLIOUS LAWYERING*, *supra*); Anthony V. Alfieri, *Reconstructive Poverty Law Practice: Learning Lessons of Client Narrative*, 100 YALE L.J. 2107 (1991); Anthony V. Alfieri, *Speaking out of Turn: The Story of Josephine V.*, 4 GEO. J. LEGAL ETHICS 619 (1991); Anthony V. Alfieri, *Stances*, 77 CORNELL L. REV. 1233 (1992); Anthony V. Alfieri, *(Un)covering Identity in Civil Rights and Poverty Law*, 121 HARV. L. REV. 805 (2008). For my reservations about his works in the 1980s and 1990s and the fit between his emphases and my own, see Piomelli, *Appreciating Collaborative Lawyering*, *supra*, at 457–70 and Piomelli, *Foucault's Allure and Limits*, *supra*, at 459 n.299, 467 n.331, 471 n.348.

2. By "citizen," I intend an active, self-governing member—regardless of immigration status—of a community of moral and political equals.

3. See, e.g., LÓPEZ, *REBELLIOUS LAWYERING*, *supra* note 1, at 38 (rebellious lawyers "must . . . continually evaluate the likely *interaction* between legal and 'non-legal' approaches to problems"—an unnecessary undertaking if one universally eschewed legal approaches (emphasis added)); Gordon, *Not the Protagonist*, *supra* note 1, at 2141 ("[L]aw is one of many tools in the arsenal of social change tactics. It can neither be condemned nor endorsed in the abstract, and the forms of its deployment, its usefulness, and its pitfalls must always be worked out in relation to . . . a particular context."); Piomelli, *Appreciating Collaborative Lawyering*, *supra* note 1, at 512 (noting that "the main lesson I learned was not categorical, but contextual: not to avoid the law, but to put it in its [proper] place," by, *inter alia*, "explor[ing] the full local context: its history, network of power relations, and the operation of structural forces such as race, class, and gender"); Piomelli, *Democratic Roots*, *supra* note 1, at 606 ("Most collaborative lawyers view litigation and other contexts in which lawyers . . . speak and act for . . . clients as at least potentially appropriate and effective But these lawyers also encourage joint exploration of other arenas or avenues where clients and allies can engage in their own persuasive efforts so they are not always . . . spoken for by others.").

For democratic lawyers' favorable descriptions of specific instances of litigation, see, for example, Ashar, *Resistance Movements*, *supra* note 1; LÓPEZ, *Economic Development*, *supra* note 1; Shauna I. Marshall, *Class Actions as Instruments of Change: Reflections on Davis v. City and County of San Francisco*, 29 U.S.F. L. REV. 911 (1995); Su, *supra* note 1; White, *Mobilization on the Margins*, *supra* note 1.

conducted as a stand-alone approach to social change, *unconnected to and uninformed by collective public action*. Instead, these lawyers favor plural, multilateral efforts by multiple actors in a variety of spheres. They treat litigation, lobbying, community and popular education, media campaigns, political mobilization, and organizing as a range of options to fully explore and to mix and match as each specific context warrants.

Many labels have been attached to this tradition, among them: rebellious lawyering,⁴ collaborative lawyering,⁵ critical lawyering,⁶ community lawyering,⁷ mobilization lawyering,⁸ and law and organizing.⁹ I add to the cacophony by suggesting this approach is usefully understood as *democratic lawyering*, because democracy—as these lawyers and their partners conceive it—is central to their aspirations, values, and methods. As Part I outlines, the vision of democracy that lies at the heart of this approach to lawyering centers on the robust participation of ordinary citizens and their groups in individual and collective self-government across a range of settings. This expansive understanding of democracy, which these lawyers and their partners strive to bring to life, challenges the thinner

4. See LÓPEZ, REBELLIOUS LAWYERING, *supra* note 1.

5. See Piomelli, *Appreciating Collaborative Lawyering*, *supra* note 1, at 441; Piomelli, *Foucault's Allure and Limits*, *supra* note 1, at 398; White, *Collaborative Lawyering*, *supra* note 1, at 159; see also Michael Diamond, *Community Lawyering: Revisiting the Old Neighborhood*, 32 COLUM. HUM. RTS. L. REV. 67, 82–90 (2000); Hing, *supra* note 1, at 2–3 (calling López, White, and Piomelli theorists of collaborative approach to community lawyering); Richard D. Marsico, *Working for Social Change and Preserving Client Autonomy: Is There a Role for "Facilitative" Lawyering?*, 1 CLINICAL L. REV. 639, 654 (1995); Rovner, *supra* note 1, at 1090–96; Anthony C. Thompson, *Navigating the Hidden Obstacles to Ex-offender Reentry*, 45 B.C. L. REV. 255, 299 n.271 (2004).

6. See Katherine R. Kruse, *Fortress in the Sand: The Plural Values of Client-Centered Representation*, 12 CLINICAL L. REV. 369, 394–97 (2006); Binny Miller, *Give Them Back Their Lives: Recognizing Client Narrative in Case Theory*, 93 MICH. L. REV. 485, 486 (1994); Louise G. Trubek, *Critical Lawyering: Toward a New Public Interest Practice*, 1 B.U. PUB. INT. L.J. 49 (1991).

7. See Marshall, *supra*, note 1; Zuni Cruz, *supra*, note 1; see also Karen Tokarz, Nancy L. Cook, Susan Brooks & Brenda Bratton Blom, *Conversations on "Community Lawyering": The Newest (Oldest) Wave in Clinical Legal Education*, 28 WASH. U. J.L. & POL'Y 359 (2008); Rose Cuison Villazor, *Community Lawyering: An Approach to Addressing Inequalities in Access to Health Care for Poor, of Color and Immigrant Communities*, 8 N.Y.U. J. LEGIS. & PUB. POL'Y 35 (2004). Angela Harris, Margaretta Lin, and Jeff Selbin offer a subtle improvement: "lawyering in community." See Harris et al., *supra* note 1, at 2093.

8. See Scott L. Cummings, *Mobilization Lawyering: Community Economic Development in the Figueroa Corridor*, in CAUSE LAWYERS AND SOCIAL MOVEMENTS 302, 302–35 (Austin Sarat & Stuart A. Scheingold eds., 2006); Paul R. Tremblay, *Acting "A Very Moral Type of God": Triage Among Poor Clients*, 67 FORDHAM L. REV. 2475, 2502–04 (1999).

9. See Scott L. Cummings & Ingrid V. Eagly, *A Critical Reflection on Law and Organizing*, 48 UCLA L. REV. 443, 447 (2001); Loretta Price & Melinda Davis, *Seeds of Change: A Bibliographic Introduction to Law and Organizing*, 26 N.Y.U. REV. L. & SOC. CHANGE 615 (2000–01). Jennifer Gordon even more helpfully suggests: "law in the service of organizing." Gordon, *Not the Protagonist*, *supra* note 1, at 2141 (emphasis omitted).

conception¹⁰ that currently prevails (and long has prevailed) in mainstream U.S. culture and society.¹¹

Several democratic lawyers have recently noted that their approach to lawyering and social change is a response to the political economic agenda of neoliberalism,¹² with its evisceration of limits on the power of employers and property owners, shredding of social safety nets, rampant privatization of public assets, and shriveling of the public domain.¹³ And they are right. Democratic lawyers and those with whom they join do aim to limit the power of employers and property owners, in order to enable ordinary people to protect themselves, their families, and communities from market forces. These lawyers and their partners seek to restore public assets, enlarge the public domain, and to reinvigorate public discourse by including the voices, ideas, and initiatives of low-income and working-class people, people of color, and their groups and communities.

As Part II sketches, in addition to reinterpreting democracy and confronting neoliberalism, democratic lawyering also challenges other key elements of the cognitive and cultural conditioning of mainstream U.S. culture—elements that long predate neoliberalism and its rise over the past thirty years. Democratic lawyering contests individualistic, aristocratic, and formalistic predilections that have long pervaded, even as they have not monopolized, mainstream culture and lawyers' professional socialization. Democratic lawyering challenges, for example, deep-seated conventional predispositions—held not simply by conservatives, but also by many who consider themselves liberal or progressive—about individuals and groups, intelligence and expertise, and the comparative attention we pay to formal rights or to the actual power of individuals and groups to change their lives.

I. PURSUING A REDEFINED, DISTINCTIVELY PARTICIPATORY AND EGALITARIAN DEMOCRACY

Democratic lawyers challenge orthodox understandings of what democracy means and how it is practiced. These lawyers reject the reigning protective, elite-centered view that democracy is simply a prudential device for ensuring that expert leaders are incentivized to govern wisely on behalf

10. See BENJAMIN R. BARBER, *STRONG DEMOCRACY: PARTICIPATORY POLITICS FOR A NEW AGE* 3–25 (20th anniversary ed. 2003) (1984).

11. For an exposition of the historical roots of this participatory vision of democracy, its affinity with and influence on these lawyers' core values, and its manifestation in their practices, see Piomelli, *Democratic Roots*, *supra* note 1.

12. See Ashar, *Collective Mobilization*, *supra* note 1, at 360–64; Ashar, *Resistance Movements*, *supra* note 1, at 1879; Foster & Glick, *supra* note 1, at 2018–25; Harris et al., *supra* note 1, at 2088–93, 2101–11.

13. For descriptions and interpretation of neoliberalism and its global ascendance since the late 1970s, see DAVID HARVEY, *A BRIEF HISTORY OF NEOLIBERALISM* (2005); NEOLIBERALISM: A CRITICAL READER (Alfredo Saad-Filho & Deborah Johnston eds., 2005); see also LISA DUGGAN, *THE TWILIGHT OF EQUALITY?: NEOLIBERALISM, CULTURAL POLITICS, AND THE ATTACK ON DEMOCRACY* (2003); Elizabeth Martinez & Arnoldo Garcia, CORPWATCH, *What Is Neoliberalism? A Brief Definition for Activists*, <http://www.corpwatch.org/article.php?id=376> (last visited Feb. 16, 2009).

of primarily passive constituents. They also reject that view's analogue in the lawyering domain: the expert lawyer who represents wisely on behalf of passive clients. Instead, democratic lawyers envision—and with others act upon—an inclusive, participatory, and egalitarian understanding of democracy as a transformative approach to social change and relationships, one that enhances the power of ordinary people and their groups to meet their needs by actively participating in self-government and collective public action.

A. The Prevailing Protective View of Democracy as a Device for Selecting the Fittest to Wisely Govern and Represent the Otherwise Uninvolved

To the vast majority of people in the United States, democracy is simply a political concept. It describes the political system in place throughout the United States, as well as a normative expectation for other nations. Its essence is an electorate that is provided an opportunity, by majority vote of those opting to cast secret ballots, to select officials to govern on their behalf for limited terms. Other prerequisites likely include sufficient freedom of speech, assembly, and the press to enable candidates to communicate with the electorate. Democracy in this view is fundamentally a device for securing assent from those to be governed.

Among its chief theoretical virtues are the formally equal say it accords each voter and the salutary incentive structure it institutes for public officials—as the need to regularly appear before an electorate promotes rulers' accountability and deters their misfeasance. Democracy, so construed, is a system that protects against misgovernment. Its central feature, voting, is chiefly valued for its ability to authorize political leaders and to optimally shape their behavior.

If prompted, many in the United States would likely augment this equation of democracy and voting with an insistence on the necessity of institutional checks and balances to constrain the inevitable excesses of majority rule. Incorporating the representative republican vision of James Madison and his fellow Federalists into a term and concept (democracy) that those thinkers rejected,¹⁴ most in the United States likely view constitutional constraints and judicial review as essential democratic

14. The Federalists believed in and designed a representative republican government, not a democratic one. As James Madison wrote in the Federalist No. 10, "a pure democracy," that is, "a society consisting of a small number of citizens who assemble and administer the government in person," was doomed to factionalism and the tyranny of the majority. THE FEDERALIST NO. 10, at 76 (James Madison) (Clinton Rossiter ed., 2003). He was convinced that "democracies have ever been spectacles of turbulence and contention; have ever been found incompatible with personal security or the rights of property; and have in general been as short in their lives as they have been violent in their deaths." *Id.* The Federalists instituted instead a representative republic in which popular participation would be narrowly cabined and actual governing delegated, in Madison's words, to "a chosen body of citizens, whose wisdom may best discern the true interest of their country and whose patriotism and love of justice will be least likely to sacrifice it to temporary or partial considerations." *Id.*

corequisites—necessary to curb popular excess and to protect minorities from oppression by majorities.

Over the past half century, an essentially economic and elite-focused model of democracy has risen to prominence. Developed by Joseph Schumpeter, a far-rightist Austrian economist,¹⁵ this model has deeply influenced mainstream U.S. political scientists and has been propagated widely by the media, politicians, and political parties.¹⁶ In this view, democracy is at root a marketplace in which politicians (and parties) compete with each other to obtain the electorate's authorization to rule. Its key actors are the political entrepreneurs who market themselves to voters (and organized interest groups) to secure the right to govern. Voters are but consumers, asked periodically to signal their preferences between competing political brands. Assumed to be uninterested in politics and public policy, voters are not expected to do much research; simply signaling satisfaction or dissatisfaction with their own lives is sufficient. The actual business of government—the deliberation over and formulation of public policy and the shaping of economic and social behavior—is left to expert political entrepreneurs (and to the organized interest groups who act analogously to institutional investors in this market).

A fundamental, shared aspect of these mainstream glosses on democracy is the idea of democracy as a mechanism to protect society from misgovernment and to encourage rule by those expert leaders deemed fittest for the task. The objective is to enable a natural aristocracy—not of birth, but of talent—to rule.¹⁷ Voters do not rule; they periodically pick their rulers. In this view, democracy's chief impact or output is better leaders, leaders disinclined to infringe on the liberties of those who may refuse to reelect them. Voting may bring a modicum of self-satisfaction for doing one's part, but it does not significantly shape the voter, who only plays this role of picking among fixed choices one or two days a year. In democracy so understood, politicians may be shaped, but not voters.

15. See JOSEPH A. SCHUMPETER, *CAPITALISM, SOCIALISM, AND DEMOCRACY* (Harpers & Bros. 1950) (1942). For a discussion of his political sympathies, see JOHN MEDEARIS, JOSEPH SCHUMPETER'S TWO THEORIES OF DEMOCRACY 19–77 (2001) (describing Schumpeter's views as reactionary, monarchist, and pro-Nazi, even after emigrating to the United States).

16. For a fuller discussion of the influence of this model of democracy on the pluralist school of political science, as well as its propagation by U.S. media and politicians, see Piomelli, *Democratic Roots*, *supra* note 1, at 551–54, 556. A leading contemporary advocate of Joseph Schumpeter's view of democracy is Judge Richard Posner. See RICHARD A. POSNER, *LAW, PRAGMATISM, AND DEMOCRACY* (2003).

17. See, e.g., THE FEDERALIST NO. 10, *supra* note 14, at 77 (arguing for a representative republic on grounds it would prove “most favorable to the election of proper guardians of the public weal”); POSNER, *supra* note 16, at 109 (describing successful political candidates as “belong[ing] to an elite of intelligence, cunning, connections, charisma and other attributes”); Letter from Thomas Jefferson to John Adams (Oct. 28, 1813), in 2 THE COMPLETE ADAMS-JEFFERSON LETTERS 387, 388 (Lester J. Cappon ed., 1959) (lauding “natural aristocracy” of talent and virtue that would be elected to rule in the United States, in contrast to “artificial aristocracy founded on wealth and birth” that ruled in Europe).

In this vision of democracy, popular participation is an individual and purely optional choice. To the extent it is of interest, the role of a rank-and-file member of society is not so much to participate in governing as a *citizen*, as it is to select one's governors as a *voter*.¹⁸ Voting itself, as it is commonly understood, is an individual, even a solitary, action. Broad popular participation is deemed unnecessary to conferring legitimacy. Indeed, for many (especially among political, economic, and educational elites), broad-based participation is actually undesirable, for people of lower socio-economic status (who are most likely not to vote) are believed not to share core democratic values and are deemed particularly susceptible to authoritarian impulses.¹⁹

B. Re-envisioning Democracy as an Inclusive, Participatory Approach to Relationships and Social Change that Develops Wiser, Self-Governing Individuals and Groups Able to Act in Concert with Others

Democratic lawyers act on an entirely different vision of democracy. Their understanding returns to the original roots of the word. *Demokratia* in ancient Greek was the combination of *demos* ("the people" or "the common people") and *kratos* (typically translated as "rule," occasionally as "power").²⁰ To these lawyers and their partners, democracy means enhancing the power of low-income and working-class people and people of color to participate meaningfully in *self-rule* or *self-government* broadly construed.²¹ The aim is to enhance *citizens'* participation in public

18. Although members of the U.S. populace are typically referred to as citizens, in this prevailing view of democracy, the dominant role of a citizen is simply to vote—or to allow officials to believe that she might vote.

19. These views have held sway for the past half century. See, e.g., BERNARD R. BERELSON ET AL., *VOTING: A STUDY OF OPINION FORMATION IN A PRESIDENTIAL CAMPAIGN* 314 (1954) (arguing widespread participation by a full range of citizens "might culminate in rigid fanaticism that could destroy democratic processes"); THOMAS R. DYE & HARMON L. ZEIGLER, *THE IRONY OF DEMOCRACY: AN UNCOMMON INTRODUCTION TO AMERICAN POLITICS* (12th ed. 2003); *EDUCATING THE DEMOCRATIC MIND* 271 (Walter C. Parker ed., 1996) ("[T]he masses of America are apathetic and ill-informed about politics and public policy, and they have a surprisingly weak commitment to democratic values. . . . But fortunately for these values and for American democracy, the American masses do not lead, they follow" (quoting THOMAS R. DYE & HARMON L. ZEIGLER, *THE IRONY OF DEMOCRACY: AN UNCOMMON INTRODUCTION TO AMERICAN POLITICS* 2 (4th ed. 1978))); SEYMOUR MARTIN LIPSET, *POLITICAL MAN: THE SOCIAL BASES OF POLITICS* 98 (1960) ("[S]tudies suggest . . . lower-class way of life produces individuals with rigid and intolerant approaches to politics."); Robert Lane, *Fear of Equality*, 53 AM. POL. SCI. REV. 35, 51 (1959) (concluding, from interviews with fifteen working-class and lower-middle-class men, that U.S. professional classes are chief defenders of ideals of freedom and equality).

20. See ROBERT A. DAHL, *ON DEMOCRACY* 11 (1998); M.I. FINLEY, *POLITICS IN THE ANCIENT WORLD* 1–2 (1983).

21. See, e.g., GORDON, *SUBURBAN SWEATSHOPS*, *supra* note 1, at 6, 141–47, 291–94 (discussing Workplace Project's "deep political and moral belief" in internal participatory democracy and its salutary impact on individual members and on a group's capacity to take on external battles); Ashar, *Resistance Movements*, *supra* note 1, at 1923–34 (describing "new paradigm of social change . . . rooted in a radical democratic vision of the participation . . . in politics" of predominantly immigrant and of-color low-wage workers);

deliberation and public action—not simply *voters'* selection of representatives to engage on their behalf in that deliberation and action.

This democratic vision serves as an aspiration that guides these lawyers' conduct and their pursuit of social change, especially at a local and institutional level. It is not necessarily a universal model of political governance that these lawyers aim to apply at the national level. Instead of seeking to replace representative republican government, these democratic lawyers and those with whom they join aim to resuscitate it with a strong infusion of the popular participation that the Founding Fathers sought to circumscribe. These lawyers strive to foster and team with energized publics²² of ordinary people that press their representatives (and their nongovernmental adversaries) to respond to their needs. Democratic lawyers collaborate with and nurture grassroots groups in which everyday people participate in multiple realms of self-rule or self-government, including tactical and strategic deliberation, public and behind-the-scenes leadership, joint public action, and joint assessment of that action.

Democracy in this view is an egalitarian undertaking. At its heart is a commitment to resisting subordination—i.e., relationships in which some purport to rule over others, in which some dominate and others are expected to submit—and eliminating deprivation. It is a rejection of second-class status for anyone.²³ Democratic lawyers recognize the likelihood that ordinary people will have to work hard together to force their way into spaces and roles occupied by elites who purport to *be* and to *know* better. As a kindred thinker writes, “Democracy is always a movement of an energized public to make elites responsible”; it is “the taking back of one’s powers” from elites who proclaim to be better suited to rule.²⁴ Its aim is to create actual equality, rather than simply formal equality: relationships in which parties interact as fellow citizens, rather than as superiors and subordinates. Democratic citizenship entails a horizontal relationship with one’s equals, instead of a vertical relationship to a sovereign. In the words of another like-minded theorist, “democracy is about the public life of citizens, about ordinary human beings venturing ‘out’ to take part in deliberations over shared concerns, to contest exclusions from the material and ideal advantages of a free society, and to invent new forms and practices.”²⁵

Foster, *supra* note 1, at 838–41 (discussing “strong version of participatory democracy” practiced by grassroots environmental justice groups).

22. See *infra* notes 41–42 and accompanying text.

23. As then-U.S. Senator Joseph Biden stated in accepting the Democratic Party’s 2008 nomination for Vice-President, “My mother’s creed is the American creed: No one is better than you. You are everyone’s equal, and everyone is equal to you.” Senator Joseph Biden, Acceptance Speech at the Democratic National Convention (Aug. 27, 2008), <http://www.npr.org/templates/story/story.php?storyId=94048033>.

24. See CORNEL WEST, *DEMOCRACY MATTERS: WINNING THE FIGHT AGAINST IMPERIALISM* 68 (2004).

25. See SHELDON S. WOLIN, *POLITICS AND VISION: CONTINUITY AND INNOVATION IN WESTERN POLITICAL THOUGHT* 520 (expanded ed. 2004) (1960).

For democratic lawyers, democracy's scope is broader than the purely political realm of office holding or policy making. With broad-based popular participation in governing as the goal, many of these lawyers interpret government expansively to include the many domains in which people strive to shape the behavior of others.²⁶ Government—and potentially self-government—occurs not only in the political realm, but also in grassroots groups, workplaces, schools, voluntary associations, religious institutions, and families. It occurs wherever a person, group, or institution tries to persuade a target to alter its own conduct or the conduct of others. These lawyers believe that groups, institutions, and communities in which many share in leadership and governance are typically stronger than those governed by one or a few.²⁷ The fundamental aim is to ensure that each of us can participate—at least sometimes—in individual and collective efforts to reshape our lives and worlds. For ordinary people to successfully engage in self-government, these lawyers and their partners believe it is essential to work collectively and collaboratively with others. And so these lawyers and their partners aim to seize every opportunity to build infrastructure for such collaborations and collective ventures.

Applying the concept beyond the political realm, democracy also becomes an inclusive way of interacting and interconnecting with others as equals. It is an approach that seeks to maximize contributors, harness diverse talents and perspectives, and unleash energies. It is grounded in the conviction that each individual and group has something to contribute to the life of a community. Democracy is thus also a spirit, a way of life, a way of being in the world, a way of working with others in collective actions toward shared, public purposes.²⁸ It is a commitment to work with others in a way that is consistent with the world one seeks with them to create.²⁹ It is also a clear-eyed understanding that none of that work is easy or conflict-free.

26. I borrow this concept from French philosopher Michel Foucault, who, late in his life, turned his attention to the variety of techniques and mentalities of government, a term he intended expansively to include "the notion of governing oneself, one's children, a family, a farm, an institution, souls and lives, as well as a locality, province, or state." Piomelli, *Foucault's Allure and Limits*, *supra* note 1, at 442 (citing Michel Foucault, *Governmentality*, in *THE FOUCAULT EFFECT: STUDIES IN GOVERNMENTALITY* 205 (Graham Burchell et al. eds., 1994)).

27. Ella Baker, whose vital role in shaping the young leaders of the Student Non-Violent Coordinating Committee (SNCC) has only recently been fully appreciated, regularly emphasized the importance of developing ordinary people's capacity for leadership. She urged the fostering of "group-centered leadership," rather than "leader-centered groups." Piomelli, *Democratic Roots*, *supra* note 1, at 589 (citing JOANNE GRANT, ELLA BAKER: FREEDOM BOUND 5-6 (1998)). For a description of her democratic vision and its influence on democratic lawyers, see *id.* at 587-95.

28. John Dewey is perhaps the foremost advocate of this expansive view of democracy as a way of life. For an exposition and analysis of his vision of democracy and its influence on democratic lawyers, see *id.* at 565-82.

29. See LÓPEZ, REBELLIOUS LAWYERING, *supra* note 1, at 382 ("[L]awyerling . . . must itself reflect and occasionally even usher in the world we hope to create.").

At the heart of this democratic vision is a faith in the intelligence (also broadly construed) and potential of ordinary people, once unleashed by democratic practices. Rather than presuming that everyday people—especially people of color or low-income or working-class people—are duped, defeated, overwhelmed, or quiescent, democratic lawyers seek out instead the many exceptions to these purported rules. Without ignoring real needs, these lawyers focus too on identifying and reinforcing individual and collective assets and strengths. These lawyers and their partners believe that democratic practices—of inclusion, information sharing, discussion, deliberation, strategizing, joint action, joint assessment, and mutual accountability—foster the growth of all participants. These practices result not only in wiser actions, but they also develop wiser and stronger actors, better able to act in concert with others to achieve shared ends.

In this view, democracy, rather than simply producing wise political leaders, enables individuals, groups, and communities to develop and flourish. It fosters true *liberty*, understood as the ability to accomplish one's goals and to grow by acting effectively with others. It instantiates true *equality*, understood as wide-scale recognition of individual incommensurability—the idea that everyone is unique and worthy of respect, that notions of superiority and inferiority do not apply to individuals or communities. It engenders affective *solidarity*, the feeling of communal bonds, which in turn fuels joint public action and the willingness to consider and accommodate the interests of others.³⁰ It also creates active, self-governing citizens and citizens' groups capable of working in concert to pursue shared ends and public purposes.

C. Implementing Democratic Values and Practices

This vision of democracy—and the commitment to bring it to life—suffuses the values and practices of democratic lawyers. These lawyers practice across a wide range of settings. They work with low-wage, often immigrant, workers and their organizations,³¹ with tenants and their activist groups,³² with small businesses facing discrimination,³³ with tribes of First Peoples and their members,³⁴ and with a host of rural and urban, low-income and working-class, often of-color communities. Those communities face a variety of threats—strip-mining,³⁵ toxic or hazardous

30. See Piomelli, *Democratic Roots*, *supra* note 1, at 572–75 (describing Dewey's similar understanding of liberty, equality, and fraternity).

31. See generally GORDON, *SUBURBAN SWEATSHOPS*, *supra* note 1 (day laborers, housekeepers, and gardeners); Ashar, *Resistance Movements*, *supra* note 1 (restaurant workers); Gordon, *We Make the Road*, *supra* note 1 (day laborers, housekeepers, and gardeners); Su, *supra* note 1 (garment workers).

32. See Marshall, *supra* note 1; Piomelli, *Appreciating Collaborative Lawyering*, *supra* note 1.

33. See López, *Reconceiving Civil Rights Practice*, *supra* note 1.

34. See Imai, *supra* note 1; Zuni Cruz, *supra* note 1.

35. See Rivkin, *supra* note 1.

"LULUs" (locally undesirable land uses),³⁶ elimination of rent controls,³⁷ potentially gentrifying land use developments,³⁸ and government-ordered displacement and relocation.³⁹ They often mobilize and sometimes form organizations to develop and implement their own visions of community and economic development.⁴⁰

A unifying thread is that democratic lawyers regularly work with people and groups involved in struggles for dignity, survival, self-determination, and other basic human needs. These lawyers seek to foster and join collective efforts of low-income and working-class people and people of color to reshape their own lives and communities. Democratic lawyers work, in short, to form and support active *publics*—groups that come together to understand, confront, and attempt to gain some control over the forces and actors shaping their lives.⁴¹ These democratic publics act together on shared values and commitments and they understand themselves rationally and emotionally as comprising a community.⁴²

Across their practice settings, robust, participatory democratic values imbue these lawyers' aims and methods. Democratic lawyers are committed to equality, to resisting subordination, to fostering individual and collective self-government. They are committed to inclusion, to ensuring that all voices and talents are brought to bear. They insist on respect for the intelligence and agency of all with whom they work. They value and seek to build opportunities for face-to-face association and collective action, which they believe are vital to building power and fostering the human development of all who participate. These lawyers are committed to two-way, mutually accountable relationships. They believe everyone must be open to teaching and to learning. They insist on only pursuing means that further their (and their partners') ultimate ends. They emphatically reject benevolent paternalism. They aim instead to foster individuals' and groups' direct self-expression and self-determination. They are committed to continually reassessing and retooling tactics and strategies in light of actual experiences and changing circumstances.⁴³

36. See COLE & FOSTER, *supra* note 1; Cole, *Models of Environmental Advocacy*, *supra* note 1; Foster, *supra* note 1.

37. See Piomelli, *Appreciating Collaborative Lawyering*, *supra* note 1.

38. See generally Foster & Glick, *supra* note 1; Harris et al., *supra* note 1; López, *Economic Development*, *supra* note 1.

39. See generally White, *To Learn and Teach*, *supra* note 1.

40. See generally Bennett, *supra* note 1.

41. See Piomelli, *Democratic Roots*, *supra* note 1, at 580 (citing JOHN DEWEY, *THE PUBLIC AND ITS PROBLEMS* 15–16 (Swallow Press 1991) (1927)) (discussing John Dewey's conceptualization of "a public").

42. As Al Haber, a leader of Students for a Democratic Society (SDS) and codrafter with Tom Hayden of its manifesto, the Port Huron Statement, wrote, "[D]emocracy is based on the idea of a 'political' public—a body that shares a range of common values and commitments, an institutional pattern of interaction and an image of themselves as a functioning community." JAMES MILLER, "DEMOCRACY IS IN THE STREETS": FROM PORT HURON TO THE SIEGE OF CHICAGO 69 (1987).

43. For a fuller exposition of these democratic values and their implementation in democratic lawyers' work, see Piomelli, *Democratic Roots*, *supra* note 1, at 598–611.

Democratic lawyers implement these values in their relationships with the individuals and groups with whom they work and in the multidimensional efforts in which they join. Two examples will, I hope, ground these ideas. The first (drawn from Jennifer Gordon's descriptions of the Workplace Project in Hempstead, Long Island⁴⁴) explores in some depth a democratic approach to a common lawyering task. The second (drawn again from the Workplace Project, as well as other collaborations between lawyers, immigrant workers, and their groups⁴⁵) sketches the breadth of approaches that democratic lawyers and their partners employ.

Contrasting democratic lawyers' approach to "community education," for example, with that of their more conventional peers reveals how democratic values inform and transform specific lawyering tasks. Many lawyers, both legal aid and pro bono attorneys, equate community legal education with "Know Your Rights" presentations, in which a lawyer (or perhaps a public official) makes a presentation to a preexisting group of lay people for whom she translates legal information about substantive legal rights and procedural mechanisms for enforcing them.⁴⁶ Besides leaving room for questions at the end—and possibly asking a few calibrating questions herself at the outset to ensure a fit with the audience—these presentations, as conventionally implemented, are typically not highly interactive or participatory affairs; they often resemble a lecture, followed perhaps by brief questions and answers.⁴⁷

Democratic lawyers aim to avoid such a one-directional, didactic approach, with its implicit message of "here's what I know that you need to learn." Instead, a democratic lawyer would likely approach the group with greater curiosity and more clearly conveyed respect. Her goal would not just be to transmit information, but also to learn *from* and *with* group members about how the information might most meaningfully affect their lives and her potential work with them and similarly situated others. She would thus focus on exploring what the group already collectively knows, what they make of what they know, and what else they would like to learn. (Many questions might well be posed in the first-person plural: What do we know? What do we think? What else do we need to know? How will

44. See GORDON, SUBURBAN SWEATSHOPS, *supra* note 1, at 67–304; Gordon, *We Make the Road*, *supra* note 1.

45. See GORDON, SUBURBAN SWEATSHOPS, *supra* note 1, at 67–304; Ashar, *Resistance Movements*, *supra* note 1; Gordon, *We Make the Road*, *supra* note 1; Su, *supra* note 1.

46. I do not underestimate the importance, or difficulty, of effectively translating legal provisions and practices to make them understandable to nonlawyers. As Jerry López has noted, this is a vitally important skill for a democratic lawyer. See LÓPEZ, REBELLIOUS LAWYERING, *supra* note 1, at 43–44 (referring to the need to "translate in two directions," to be "bicultural and bilingual" in "both the lay and the legal worlds").

47. Among the implicit premises of many "Know Your Rights" efforts are: that the audience's lack of information is its primary deficit; that the lawyer/presenter can fill that gap; and that the lawyer/presenter has no significant needs of her own—other than to convey information and perhaps to meet "outreach" targets or goals. For an exploration of a broad range of approaches to community education, see Ingrid V. Eagly, *Community Education: Creating a New Vision of Legal Services Practice*, 4 CLINICAL L. REV. 433 (1998).

we learn it?) The session would be inclusive, participatory, and conversational. It would resemble a seminar or colloquium in which participants share what becomes a group discussion. The lawyer would encourage group members to talk and to comment on each other's stories and interpretations. She would likely both facilitate discussion and share legal information—but that information would aim to spur, rather than end, discussion. The session would also be deliberative and purposeful. "What the law says" would not be the central focus or touchstone; a variety of other potential avenues of redress would be explored. The lawyer might well encourage the group to discuss the fairness and adequacy of any legal provisions or procedures discussed. She might invite the group to think together about why "the law" is the way it is, about whose interests are served and whose are not, and about what a more adequate approach or system might look like. She likely would aim to link the session to some form of group action, exploring how the group might use, contest, or ignore the information to accomplish its aims. In all these ways, a democratic lawyer would work with the group to collectively explore how legal and nonlegal knowledge and action might inform and shape their efforts to work toward desired social change.⁴⁸

Participatory democratic values also infuse the multidimensional array of approaches in which, for example, these lawyers (and the low-wage workers, organizers, and other allies with whom they join) routinely engage. As the literature has explored, their tactics and strategies include: street-corner and church-hall organizing of day laborers and housekeepers; picketing outside the homes or businesses of targeted employers; public education campaigns through newspapers, radio spots, and comic books; extended leadership training courses; creating a participatory worker-run organization with multiple opportunities/obligations for members to sit on the board of directors, run committees, plan strategies and tactics, and interact with funders; drafting model employment agreements; creating landscaping and housekeeping collectives; and encouraging low-wage workers to design, draft, and lobby for passage of a new unpaid wage enforcement law.⁴⁹ Tactics also include: advocating for groups of formerly enslaved garment workers against immigration authorities intent on detaining them, resorting to direct action when legal arguments fail; actively involving a multi-racial group of garment workers in multiple facets of federal lawsuits seeking liability against their direct employers as well as the manufacturers and retailers who control the industry and benefit

48. This paragraph is drawn from Jennifer Gordon's rich and insightful discussion of the Workplace Project's efforts to integrate "rights talk and collective action" and the content and style of the "Worker's Course" that it required its members to complete. See GORDON, *SUBURBAN SWEATSHOPS*, *supra* note 1, at 148–84.

49. See *id.* at 92–96, 99 (organizing laborers and housekeepers), 86–87 (picketing), 118–20 (public education), 125–29 (leadership training course), 116–41 (worker-run organization), 99–103 (employment agreements), 103–04 (creating collectives), 104–07, 241–80 (passing wage law).

from sweatshop conditions;⁵⁰ litigating wage and hour claims on behalf of individual workers in conjunction with workplace organizing campaigns in a manner aimed to support organizational capacity-building; filing and defending legal actions to protect workers' rights to engage in direct action; and helping to form a worker-owned and -run restaurant.⁵¹ Each of these tactics and strategies manifests a democratic commitment to working *with* ordinary people and their groups and allies to try to form an engaged public (where none initially exists) that can collectively pursue the shared goal of equal justice.

II. CHALLENGING INDIVIDUALISTIC, ARISTOCRATIC, AND FORMALISTIC ELEMENTS OF MAINSTREAM CULTURAL CONDITIONING AND LAWYERS' PROFESSIONAL SOCIALIZATION

In addition to confronting neoliberalism and its agenda and to challenging the prevailing "thin" conception of what democracy means and how it is practiced, democratic lawyering also challenges three more pillars of mainstream U.S. cultural and cognitive conditioning and lawyers' professional socialization. The individualistic, aristocratic, and formalistic cultural predispositions that democratic lawyers and their partners challenge have long pervaded—even as they have never completely monopolized—mainstream U.S. culture and lawyers' professional socialization. These cultural and cognitive predispositions suffuse the reigning approach to "public interest" lawyering that democratic lawyers aim to supplant.

In referring to culture and to cultural conditioning, I intend by culture: "those ways of approaching, understanding, and acting in the world that are widely (but not necessarily universally) shared by members of a social group—and are often hotly contested by some group members."⁵² Culture is like "a current that we and other members of our social group(s) move with, or against, and even occasionally redirect, as we strive to make sense of and act in the world."⁵³

A. *Challenging Individualism: From Isolation to Freedom-Enhancing and Wisdom-Enhancing Interconnection*

One of the fundamental predispositions that democratic lawyering challenges is the deeply rooted custom in mainstream U.S. culture to view people as, first and foremost, *individuals*, unconnected to and independent from others. As Benjamin Barber frames it, the dominant "inertial" or

50. See Su, *supra* note 1, at 407–13.

51. See Ashar, *Resistance Movements*, *supra* note 1, at 1899–916 (litigation); Fordham Law Community Economic Development Clinic, Docket of Major Client Projects: Colors Worker-Owned Restaurant, available at http://law.fordham.edu/ihhtml/cl-2ced_docket.html?id=834 (last visited Feb. 16, 2009) (describing formation of worker-owned cooperative restaurant).

52. Ascanio Piomelli, *Cross-Cultural Lawyering by the Book: The Latest Clinical Texts and a Sketch of a Future Agenda*, 4 HASTINGS RACE & POVERTY L.J. 131, 135 (2006).

53. *Id.*

"preconceptual" frame of mainstream U.S. culture—the starting point for our consideration of the world—casts humans as "separate, integral, self-contained, unitary particles or atoms" and insists that "the human perspective is first of all the perspective of . . . the isolated individual One."⁵⁴ It is through this lens, which I shall refer to as "atomized individualism," that mainstream U.S. culture trains us to view ourselves, each other, our society, and our political and economic systems.⁵⁵

Mainstream U.S. culture teaches that individuals and groups are opposing dualisms, with the latter often constituting a threat to the former. Individuals are presumed fully formed, complete, authentic selves on their own. Collectives are commonly understood as potential dangers to those fully formed individuals, especially to their liberty. Indeed, liberty is primarily understood as freedom from the overreaching demands of others—especially groups of others. Groups often mean trouble: conspiracies, mobs, peer pressure, and other destructive forms of energy. They demand and instill conformity.⁵⁶ They impinge upon, and sometimes snuff out, autonomy, individuality, and freedom.

In this view of a world where each is a dissociated One, separation is emphasized and valued. Independence and detachment from others is presumed the path not just to freedom, but also toward knowledge and wisdom; it is the way to obtain clear (objective) perspective and accurate understanding. Connection with others risks clouding judgment, in part because it ushers in emotion, which is seen as reason's enemy.⁵⁷

Atomized individualism holds sway in the legal profession as well. Among lawyers as a profession, we pledge fealty to each client as a solitary

54. BARBER, *supra* note 10, at 33. Benjamin Barber refers not to mainstream U.S. culture, but to liberalism—by which he means the core overlapping political ideas and assumptions emphasizing liberty, property, privacy, and representation that are shared by both the U.S. Center-Left (colloquially referred to as "liberals") and Center-Right (colloquially referred to as "conservatives"). He contrasts liberalism with communitarianism. *Id.*

I choose instead to refer to mainstream U.S. culture because the ideas and assumptions operate far beyond the narrowly political realm and because I wish to highlight that even as they prevail, they are still contested. See *supra* notes 52–53 and accompanying text.

55. I thank Mark Aaronson for reminding me that C. B. MacPherson insightfully explored the fundamentally possessive nature of this conception of individualism in which the individual is considered "the proprietor of his own person or capacities, owing nothing to society for them" and is seen not "as part of a larger social whole, but as an owner of himself." C. B. MACPHERSON, *THE POLITICAL THEORY OF POSSESSIVE INDIVIDUALISM: HOBBS TO LOCKE* 3 (1962).

56. Collectives in this view can lead to stultifying "groupthink," a term first formulated by Irving Janis to describe "a mode of thinking that people engage in when they are deeply involved in a cohesive in-group, when the members' strivings for unanimity override their motivation to realistically appraise alternative courses of action." See IRVING L. JANIS, *VICTIMS OF GROUPTHINK: A PSYCHOLOGICAL STUDY OF FOREIGN-POLICY DECISIONS AND FIASCOES* 9 (1972).

57. For a summary and refutation of this alleged conflict between reason and emotion, see Angela P. Harris & Marjorie M. Shultz, "*A(nother) Critique of Pure Reason*": *Toward Civic Virtue in Legal Education*, 45 *STAN. L. REV.* 1773 (1993).

One whose interests we must zealously pursue (within permissible bounds) over the interests of all others.⁵⁸ As Ann Shalleck has explored, the standard law school classroom assumes—and teaches students and future lawyers to assume—that “[c]lients simply want to maximize monetary gains (or minimize losses) and achieve the greatest possible degree of freedom and autonomy in their actions.”⁵⁹ The dominant approach to lawyering taught in most every law school clinical program, client-centered lawyering,⁶⁰ is also shaped by atomized individualism. Client-centered lawyering centers on enhancing the autonomy and central decision-making authority of the individual client;⁶¹ but it often views that client as a dissociated One, likely to resist entreaties to alter a preferred course of conduct to accommodate countervailing public imperatives.⁶²

* * *

Democratic lawyers, and those with whom they join, swim against these individualistic cultural and professional currents.

These lawyers and their partners reject atomized individualism. They see people as connected to others—to other individuals and to groups. Instead of viewing other people and groups as threats to individuality, democratic lawyers consider them vehicles for attaining individuality. Individuality is not an initial state; it is instead a result of our interactions with others—we learn, grow, figure out who we are, and achieve many of our aims through our interactions with others. In this view, individuals are formed—albeit never completely or identically—by their relationships with groups. Indeed, these lawyers and those with whom they work see people not only as connected, but also as fundamentally *interdependent*.⁶³

58. For a critique of this central premise of legal ethics, see WILLIAM H. SIMON, *THE PRACTICE OF JUSTICE: A THEORY OF LAWYERS' ETHICS* (1998).

59. Ann Shalleck, *Constructions of the Client Within Legal Education*, 45 STAN. L. REV. 1731, 1736 (1993).

60. See DAVID A. BINDER & SUSAN C. PRICE, *LEGAL INTERVIEWING AND COUNSELING: A CLIENT-CENTERED APPROACH* (1977) (articulating original formulation of client-centered approach to lawyering); DAVID A. BINDER, PAUL BERGMAN, SUSAN PRICE & PAUL R. TREMBLAY, *LAWYERS AS COUNSELORS: A CLIENT-CENTERED APPROACH* (2d ed. 2004) (presenting latest formulation by original proponents and new collaborators); Robert D. Dinerstein, *Client-Centered Counseling: Reappraisal and Refinement*, 32 ARIZ. L. REV. 501 (1990) (sympathetic critic's survey of potential justifications for and necessary modifications to client-centeredness); Kruse, *supra* note 6, at 370–71 (describing dominance of client-centered model in clinical education).

61. See Kruse, *supra* note 6, at 399–414, 419–26 (discussing multiple understandings of autonomy that underlie different interpretations of client-centered lawyering).

62. For a persistent critique, grounded in communitarianism and religious conviction, of client-centeredness's starkly individualistic bent, see THOMAS L. SHAFFER & ROBERT F. COCHRAN, JR., *LAWYERS, CLIENTS, AND MORAL RESPONSIBILITY* 15–29 (1994).

63. For a provocative and astute examination of the West's discomfort with acknowledging interdependence—and especially the discomfort of those in privileged positions in the West—see Maivân Clech Lãm, *Feeling Foreign in Feminism*, 19 SIGNS 865 (1994).

Democratic lawyers believe that individuals and groups both matter; they each warrant attention and support. Without losing sight of each person's uniqueness and dignity, these lawyers and their partners also see people in the context of the groups and communities to which they already belong or that they might join. As one democratic lawyer emphasizes, "Community lawyers do more than represent individual clients. They represent clients in definable communities. They learn about the cultures, values, and beliefs of the people in the community. They see problems of individual clients in the context of the community."⁶⁴ Such a contextualized examination of "the community" will recognize that communities, like cultures, are not often of a single mind—they too are sites of contest.

Without assuming that groups or communities are univocal or harmonious, these lawyers and their partners appreciate the potential links and insights that flow from paying attention to commonalities of race, class, gender, culture, ethnicity, neighborhood, age, vocation, religion, politics, sexual orientation, immigration status, etc. They pay attention to, and often build on, these markers of identity—seeing them as potential lines both of unity and cleavage, as well as lines along which institutional or structural power dynamics often play out.

Democratic lawyers embrace a practice and sensibility of connection. They themselves strive to connect with others. They also aim to connect those with whom they work to others who might share or further their interests. These lawyers and their partners believe it is through effective connection and joint action with others that low-income and working-class people and people of color can best protect themselves and achieve their goals.⁶⁵ Consequently, these lawyers and those with whom they join often seek to foster or strengthen horizontal ties; they look for other groups or communities who may have faced similar struggles. Connection creates awareness of potential allies and undertakings with which people and groups might join (or from which they might learn), thereby increasing the array of potential paths to achieving shared ends. Democratic connection also potentially creates feelings of solidarity and community that engender hope, courage, a sense of efficacy, and the will to persist.⁶⁶

64. Zuni Cruz, *supra* note 1, at 572 (quoting Barbra Creel et al., Univ. of N.M. Inst. for Access to Justice, Statement on Community Lawyering (1996) (unpublished statement)) (internal quotation marks omitted).

65. As Tocqueville noted, "In democratic peoples . . . all citizens are independent and weak; they can do almost nothing by themselves, and none of them can oblige those like themselves to lend them their cooperation. They therefore all fall into impotence if they do not learn to aid each other freely." ALEXIS DE TOCQUEVILLE, *DEMOCRACY IN AMERICA* 490 (Harvey C. Mansfield & Delba Winthrop eds. & trans., Univ. of Chi. Press 2000) (1835); see also Jeffrey Rosen, *I-Commerce: Tocqueville, the Internet, and the Legalized Self*, 70 *FORDHAM L. REV.* 1, 8 (2001).

66. See FRANCESCA POLLETTA, *FREEDOM IS AN ENDLESS MEETING: DEMOCRACY IN AMERICAN SOCIAL MOVEMENTS* 8–12 (2002).

These lawyers see groups, especially grassroots groups formed to pursue shared aims, as vital democratic spaces.⁶⁷ In these settings, members share and process their knowledge and experience, learn from each other, strategize and deliberate together, act on their own behalf *together*, assess their joint actions, and plot new ones.⁶⁸

Without denying the value of privacy and temporary retreats into solitude, democratic lawyers view extended isolation or separation from others as dangerous. Rather than seeing detachment as a source of impartial wisdom, these lawyers believe that—when uninformed by connection with diverse others—it leads to dangerous myopia and even ignorance. It deprives one's own efforts of information, insights, allies, and potential avenues of relief. For democratic lawyers, connection with others, especially with people and groups with different experiences and perspectives, provides a vital source of knowledge and an indispensable feedback loop to continually reassess and retool tactics and strategies.

B. Challenging Subordination: Rejecting the Exclusive Rule of the Well-Schooled Aristoi, Redefining Intelligence and Expertise

Mainstream U.S. culture is not only intensely individualistic, it is also deeply aristocratic, if one returns to the roots of the term. *Aristokratia*, the combination of *aristoi* (“the best” or “the excellent”) and *kratos* (“to rule” or “power”), means “the rule of the best.”⁶⁹ As we have seen, selecting the best to rule was the fundamental goal of the framers of the U.S. Constitution and remains the focus of Schumpeterian democracy.⁷⁰

This aristocratic bent is not limited to the political system; it pervades mainstream U.S. society, with its oft-asserted commitment to the concept of meritocracy (a more palatable term than aristocracy) and its claim to be one. The dominant presumption is that those in key decision-making positions (not just in government, but throughout the society and economy) are there because they deserve to be, because they have proven themselves to be the best. The presumption is, of course, rebuttable. Nepotism, cronyism, and other forms of favoritism persist, but they do so as exceptions to the general rule.

67. Sara Evans and Harry Boyte call these settings “free spaces” that “create new opportunities for self-definition, for the development of public and leadership skills, for a new confidence in the possibilities of participation, and for wider mappings of the connections between the movement members and other groups and institutions.” SARA M. EVANS & HARRY C. BOYTE, *FREE SPACES: THE SOURCES OF DEMOCRATIC CHANGE IN AMERICA*, at xix (2002); see also Foster, *supra* note 1, at 838–39.

68. As Professor Gordon describes, democratic groups are committed to “sharing information widely and to creating a series of opportunities, informal as well as formal, for the issues facing the group to be understood and discussed by members,” enabling “daily exercise of the skills, the interaction, and the improvisations that make participation meaningful, rich, and effective.” GORDON, *SUBURBAN SWEATSHOPS*, *supra* note 1, at 291–92.

69. See JOSIAH OBER, *MASS AND ELITE IN DEMOCRATIC ATHENS: RHETORIC, IDEOLOGY, AND THE POWER OF THE PEOPLE* 13, 19 (1989).

70. See *supra* note 17 and accompanying text.

In our purportedly meritocratic society, intelligence and drive (often described as a "willingness to work hard") are widely considered the principal determinants of who qualifies, or should qualify, as among the best.⁷¹ The definition of intelligence is, however, a troublingly narrow one. Outside the ranks of entrepreneurs, who seem to comprise a special case, intelligence in mainstream U.S. culture is almost invariably equated with erudition, i.e., with knowledge derived through reading and schooling. Expertise too, which originally referred to someone with extensive direct experience,⁷² is now largely equated with formal schooling in an academic discipline. Educators in each profession and discipline convey their field's essential knowledge and bestow upon their students at graduation the academic credential that marks them too as experts, worthy of being heeded. Professionals and other credentialed experts are presumed, by virtue of their education and positions of authority, to be uniquely well-qualified to diagnose ills and to design and implement necessary remedies. The rest of society is expected to heed these professionals and experts.

In mainstream U.S. culture, the corollary of the meritocratic claim is perhaps even more firmly entrenched: those who do *not* rise to become entrepreneurs, managers, professionals, or experts in intellectual realms have failed to rise for a reason of their own doing—because they lack the requisite intelligence and drive. Those who do not fill those ranks, i.e., low-income and working-class people (disproportionately people of color and immigrants), are widely presumed not very smart, lacking in cognitive skills, initiative, and judgment.⁷³ Their jobs and even their lives are (tacitly but pervasively) considered to require little thought. They are commonly seen as in need of information and guidance *from* professionals and experts. They are certainly not considered important sources of information or guidance *to* professionals or other experts—let alone potential partners of those professionals or experts.

Perhaps no profession in the United States is more predisposed to aristocracy than lawyers. The suggestions of Alexis de Tocqueville⁷⁴ and

71. Intelligence seems to have eclipsed civic virtue, which, in the political sphere, had been the central qualifying trait of classical republicanism. See, e.g., J. G. A. POCKOCK, *THE MACHIAVELLIAN MOMENT: FLORENTINE POLITICAL THOUGHT AND THE ATLANTIC REPUBLICAN TRADITION* (1975).

72. "Expert" is derived from the past participle of the Latin "experiri" meaning "to try, test" and thus meant someone tried and tested, a "person wise through experience." See Online Etymology Dictionary, <http://www.etymonline.com/index.php?search=expert&searchmode=none> (last visited Feb. 17, 2009).

73. See, e.g., Piomelli, *supra* note 52, at 174–75 (articulating prevalent stereotypes in U.S. of working-class people); see also *supra* note 19 (describing political scientists' characterizations of "lower-class" and working-class "masses").

74. See, e.g., ALEXIS DE TOCQUEVILLE, *DEMOCRACY IN AMERICA* 263–70 (J. P. Mayer ed., George Lawrence trans., Harper Perennial 1988) (1835) (characterizing lawyers, whom he considered "aristocrats" by "habits and taste," including "habit of order," but "of the people" by "birth and interest," as playing vital checking role in American democracy).

Louis Brandeis,⁷⁵ among others, that lawyers should play roles akin to Platonic guardians in our society no doubt contribute to this predisposition. The valorization of judicial review and of the importance of checking popular excess also leads lawyers in this direction. Legal education itself inculcates a strong message of epistemic superiority: lawyers not only think differently than others, but (implicitly) we think better. Once we as lawyers are instructed as to the ends a client seeks to achieve, it is our primary role to design and implement on our own a wise strategy to achieve those ends.

* * *

Democratic lawyers resist each of these aristocratic elements of mainstream U.S. culture and lawyers' professional socialization. These lawyers' commitment to expanding ordinary people's opportunities to engage in self-government directly challenges the preeminent role that lawyers and other experts currently play in government, in both the narrow sense of policy formation and policy implementation and in the broader sense of efforts to shape the behavior of others.

Democratic lawyers reject mainstream culture's pejorative stereotypes of low-income and working-class people, people of color, and their groups. Because they work side by side with these individuals and groups, these lawyers are daily reminded of the stereotypes' inaccuracy. These lawyers regularly observe the insight and resourcefulness of the people with whom they work. They appreciate the substantial thought, judgment, perception, and tactical and strategic decision making that pervade blue- and pink-collar work⁷⁶ and people's efforts to manage subordinate status and still feed, clothe, shelter, educate, and protect themselves, their families, and loved ones.⁷⁷ These lawyers value the savvy, courage, and will that ordinary people bring when they work toward their own liberation, toward achieving dignity and first-class citizenship.

Democratic lawyers interpret intelligence far more broadly than the book-learning and logical-analytical skills that mainstream culture equates with intelligence. Like other advocates of multiple intelligences, these lawyers appreciate, for example, narrative intelligence (the ability to tell effective stories), intrapersonal intelligence (the ability to understand oneself, one's emotions, and motivations), and especially interpersonal or social intelligence (the ability to understand, get along with, and work

75. See, e.g., Louis D. Brandeis, *The Opportunity in the Law*, Address Before the Harvard Ethical Society (May 4, 1905), in *BUSINESS—A PROFESSION* 321 (Augustus M. Kelley ed., 1971) (1914) (viewing lawyers as "holding a position of independence, between the wealthy and the people, prepared to curb the excesses of either").

76. See MIKE ROSE, *THE MIND AT WORK: VALUING THE INTELLIGENCE OF THE AMERICAN WORKER* (2004).

77. See LÓPEZ, *REBELLIOUS LAWYERING*, *supra* note 1, at 57–60; Piomelli, *Democratic Roots*, *supra* note 1, at 604.

effectively with other people).⁷⁸ They see these intelligences, along with traits such as courage, dependability, and fortitude, as invaluable to collective public action—and prevalent among many who lack formal schooling.

Instead of viewing knowledge and intelligence as purely individual traits, these lawyers also see knowledge and intelligence as properties of groups. They believe that groups often have within them, as a result of the multiple unique and shared experiences of their members, a collective knowledge and wisdom. Democratic lawyers believe this knowledge should be respected, explored, and tapped to guide action.

In large part, democratic lawyers seek to model a radically different conception of expertise and professionalism. Rather than exclusively focusing on their clients' deficits or needs and providing legal services to fill them, these lawyers also seek out clients', groups', and communities' assets and strategize how to build upon and connect them.⁷⁹ Rather than simply bestow desired outcomes on their clients, these lawyers seek to work side by side with clients and allied groups to attain those ends together.

In so doing, these lawyers reject the vanguard role of preeminent problem solver that many other lawyers—especially liberal and progressive lawyers who identify themselves as working “in the public interest”—so readily adopt. Democratic lawyers are always looking for partners with whom to join. They value thinking (and acting) “like a lawyer.” Indeed they deem it essential to think and act like a highly skilled and creative lawyer.⁸⁰ But they do not believe that thinking and acting like a lawyer is the only way to think and act, or the only way to diagnose and solve a problem. Instead, they believe that disciplinary isolation—*only* thinking within, and interacting with fellow members of, one's own discipline—places blinders on its practitioners. It leads one to “disaggregate[] complex problems into isolated elements and treat[] those with one-dimensional interventions” unlikely to fully resolve a problem.⁸¹

These lawyers and their partners aim therefore to interpret and address situations from multiple perspectives and disciplines. Attracted to multidimensional and multidisciplinary analyses, strategies, and assessments—and driven both by curiosity and humility—these lawyers do not just ask, how might a lawyer address this situation? They also ask: How might an organizer? How might an educator? How might a journalist? How might a scientist? How might a politician? How might a

78. See HOWARD GARDNER, *FRAMES OF MIND: THE THEORY OF MULTIPLE INTELLIGENCES* (10th anniversary ed., 1993) (1983).

79. For a similar approach by nonlawyers, see JOHN P. KRETZMANN & JOHN L. MCKNIGHT, *BUILDING COMMUNITIES FROM THE INSIDE OUT: A PATH TOWARD FINDING AND MOBILIZING A COMMUNITY'S ASSETS* (1993).

80. See Gordon, *Not the Protagonist*, *supra* note 1, at 2142.

81. Harry C. Boyte, Dewey Lecture at the University of Michigan: A Different Kind of Politics: John Dewey and the Meaning of Citizenship in the 21st Century 2 (Nov. 1, 2002), available at <http://www.imaginingamerica.org/IAPdfs/BoyteDeweyLecture.pdf>.

lobbyist? How might a philanthropist? How might an entrepreneur?⁸² Rather than presuming that their professional knowledge and training—what they already know—is sufficient, these lawyers are committed to constantly expanding their knowledge base and repertoires by learning how others interpret and act. So they also ask: How do the people living through the situation view it? What do they think about how to address it? How can they—and we together—work most effectively with others to address it?⁸³ These lawyers and their partners view their mission and practice as an effort to include the insights and talents of all in collective efforts of self-government.

C. *Challenging Formalism: From Establishing Rights to Building Power*

On issues of equality and freedom, mainstream U.S. culture and the legal profession both direct our attention toward formal equality and formal rights, toward constitutional and statutory provisions and what they say. The legal system—of courts and legislatures—is seen as the primary forum in which matters of freedom and equality are determined. Courts especially, with their ability to declare and protect rights, are seen as vital guardians of the interests of minorities. The key undertaking in ensuring freedom and equality in this view is to perfect “the law”—understood as the rules announced by courts and the provisions and interpretations of constitutions, statutes, and regulations.

Unspoken, but widely shared, assumptions are that important issues of freedom and equality can be presented in ways the legal system can resolve; that only relatively small, incremental adjustments in the law are necessary to move from status quo to social justice; that skillful action within the legal system alone is sufficient to make those adjustments; that the legal system and the rest of society will be bound by them; and that adjustments in the law will directly translate into freedom and equality (at least of opportunity) for those currently denied. In short, it is assumed that changes in the law will inevitably reshape people’s living conditions.

In this focus on formal rights and changing the letter and interpretation of the law, little attention is directed to issues of power—other than the power

82. Democratic lawyers do not simply pose these questions to themselves. As necessary and appropriate in each circumstance, they actually seek out organizers, educators, journalists, scientists, politicians, lobbyists, philanthropists, and entrepreneurs to become familiar with how those disciplines interpret and act.

83. Democratic lawyers also ask a series of contextual questions. As Gordon has summarized, those questions often include:

Who [are] the players here? What [is] their history in this place and elsewhere? What position [have] various government agencies and actors taken in the battle, and what stake [do] they have? How [can] they be moved toward the group’s side? What [have] other organizations tried in the face of similar threats, and why might those tactics be likely or unlikely to succeed here? How [does] this one struggle fit into the group’s broader goals for change? . . . [W]ithin this setting and facing this particular cast of institutional and individual stakeholders, how [can] this organization build power to solve the problems it face[s]?

Gordon, *Not the Protagonist*, *supra* note 1, at 2136.

of ideas. Courts are presumed unmoved by the power of the parties before them and largely insulated from the society at large. So long as both sides are represented by competent counsel, only impartially determined facts, logic, argument, and precedent will be determinative. Justice will be achieved, and freedom and equality won, if the currently underrepresented have access to skilled legal advocates.⁸⁴

* * *

Democratic lawyers reject what they consider the misguided formalism of focusing narrowly on the judicial and legal arena (and especially on perfecting the law) as the *primary* way to attain freedom, dignity, and justice for low-income and working-class people, people of color, and their communities. The aim of these democratic lawyers and their partners is not simply legal reform, but ending subordination and deprivation. They are unconvinced that legal reform alone—unconnected to other collective efforts or to the groups on whose behalf reformers believe they act—will in fact directly translate into meaningful and lasting progress in ending subordination and deprivation.

Instead, democratic lawyers pay close attention to issues of power. By power they mean not simply power over others, but also power to act effectively in concert with others.⁸⁵ These lawyers and their partners do not see the legal system as insulated from the rest of society; they believe it is deeply influenced by it—as the legal realists did.⁸⁶ They see the relative power of parties as pivotal to the reactions of judges, legislatures, public officials, the media, adversaries, and potential allies. These lawyers believe that popular mobilization and organization and effective coalition building enhances groups' and communities' power—and outsiders' perception of that power.

Democratic lawyers' attention is not, contrary to common misperception, primarily focused internally on the lawyer-client dyad, on obsessing over their potential power over clients. While these lawyers are mindful of power dynamics in their interactions with clients and groups, they are not paralyzed by fear or guilt. Like an urban myth, this misperception resists

84. This is the ideology of what Thomas Hilbink labels the "elite/vanguard" public interest bar. See Thomas M. Hilbink, *You Know the Type . . . : Categories of Cause Lawyering*, 29 LAW & SOC. INQUIRY 657, 670–81 (2004).

85. For a detailed discussion of ideas about power and their influence on democratic lawyering, see Piomelli, *Foucault's Allure and Limits*, *supra* note 1, at 445–80. For an analogous emphasis on the positive power to act in concert with others, see HANNAH ARENDT, ON VIOLENCE 44 (1969) (defining power as capacity to act in concert with others); EDWARD T. CHAMBERS, ROOTS FOR RADICALS: ORGANIZING FOR POWER, ACTION, AND JUSTICE 27–31 (2003) (describing organizing philosophy of contemporary, post-Alinsky Industrial Areas Foundation and its understanding of "relational power").

86. See, e.g., AMERICAN LEGAL REALISM (William W. Fisher III, Morton J. Horwitz & Thomas A. Reed eds., 1993); MORTON J. HORWITZ, THE TRANSFORMATION OF AMERICAN LAW, 1870–1960: THE CRISIS OF LEGAL ORTHODOXY 169–212 (1992); LAURA KALMAN, LEGAL REALISM AT YALE, 1927–1960 (1986); Joseph William Singer, *Legal Realism Now*, 76 CAL. L. REV. 465 (1988) (reviewing KALMAN, *supra*).

efforts to detail its inaccuracy.⁸⁷ It is even spread by kindred spirits whom I consider democratic lawyers.⁸⁸

In fact, democratic lawyers focus squarely on fostering clients' ability to work collectively with others in public efforts to reshape their living conditions and communities. Their aim—shared with many organizers—is not just to win particular struggles or desired policy outcomes, but to win in ways that enhance clients' and groups' capacity to win future struggles and outcomes too.⁸⁹ Democratic lawyers' focus is on building the power of their low-income, working-class, and of-color clients. It is, in short, a focus on *demokratia*—on enhancing the power of ordinary people and enabling them to actively and effectively participate in individual and collective self-government.

CONCLUSION

As this essay has explored, a distinctive vision of democracy—a robust, participatory, egalitarian, and developmental one—guides an emerging movement of social-change lawyers. This democratic vision emphasizes

87. As I have explored at length, see Piomelli, *Appreciating Collaborative Lawyering*, *supra* note 1, at 443–86, the claim that democratic lawyering theorists myopically focused in the 1980s and 1990s on internal dynamics of the one-on-one relationship between individual attorney and client—obsessing over lawyers' likely domination of low-income clients and ignoring collective action and opportunities to challenge institutional power—is simply not true of the approach's founding and leading advocates, Professors López and White. For leading statements of this critique, see Gary L. Blasi, *What's a Theory for?: Notes on Reconstructing Poverty Law Scholarship*, 48 U. MIAMI L. REV. 1063 (1994); William H. Simon, *The Dark Secret of Progressive Lawyering: A Comment on Poverty Law Scholarship in the Post-modern, Post-Reagan Era*, 48 U. MIAMI L. REV. 1099 (1994).

The critique did, however, have merit with regard to Professor Alfieri, *see supra* note 1, who linked his ideas with López and White, but endorsed a narrow vision of collaboration that left little room for lawyers to do more than parrot their clients and paid little attention, after his first article, to collective action in extrajudicial arenas. *See* Piomelli, *Appreciating Collaborative Lawyering*, *supra* note 1, at 465–70. But the critics failed to recognize that López and White tempered their postmodern insights about attorney-client power dynamics, avoided dire warnings against “interpretive violence,” and, most importantly, connected their vision of collaboration to an imperative to join with others to foster collective social and political activism. *See id.* at 485.

88. *See, e.g.*, Ashar, *Collective Mobilization*, *supra* note 1, at 406 (stating that, “[w]hile we attend to the dynamic within our relationships with clients and learn how to collaborate with them, we are not preoccupied with the potential of lawyer domination,” and thus implying that some lawyers who attend to relationships with clients and aim to collaborate with them are preoccupied by potential lawyer domination (citing Ashar, *Resistance Movements*, *supra* note 1, at 1919–20)); Gordon, *Not the Protagonist*, *supra* note 1, at 2143–44 (lauding recent shift “away from . . . the fear that lawyers will inevitably dominate and even derail community efforts,” a fear she contends has “preoccupied scholars of law and social change for decades,” but for which she cites no specific authorities); Harris et al., *supra* note 1, at 2115 (asserting, without citation to specific works, that “dread of complicity in domination shaped the writing on social justice lawyering throughout the 1980s and 1990s”).

89. *See* Piomelli, *Foucault's Allure and Limits*, *supra* note 1, at 479–80. The community organizing literature often emphasizes the indispensability of ensuring that, in every struggle, attention is focused on building long-run organizational capacity. *See, e.g.*, LEE STAPLES, *ROOTS TO POWER: A MANUAL FOR GRASSROOTS ORGANIZING* 4–7 (1984).

collectively building and strengthening infrastructure for ordinary people's participation in public action and self-rule. It rejects the elite-centered model that has long shaped what most in the United States believe democracy to entail. These democratic lawyers (and the people, groups, and institutions with whom they join) engage on the front lines of the clash with the neoliberal agenda that has dominated the past three decades.

In implementing their robust vision of democracy and confronting neoliberalism, these democratic lawyers also challenge key individualistic, aristocratic, and formalistic pillars of mainstream U.S. culture and lawyers' professional socialization. In fundamental ways, these lawyers and their partners see and act differently than their mainstream peers (not just in the corporate and private bar, but in the "public interest" bar as well). Their ideas and practices challenge reigning cultural and professional understandings and practices—about who we are and how we are constituted as a society, economy, and polity; about who acts and who follows, who matters and who doesn't, and which sorts of knowledge should be cultivated and heeded; about how justice and change are properly measured and most successfully pursued; and about what lawyers do and with whom they do it. At heart, these democratic lawyers believe—as much of the rest of U.S. society and the bar do not—that ordinary people, acting collectively with peers, receptive professionals, and other allies, can and must play a leading role in efforts to reshape our society and political economy.